

## Digitalization of The Notary Profession in The Era of Economic and Business Globalization

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**Abstract.** *The rapid development of technology today has brought significant changes in various sectors, including the world of law, economy and business. One innovation in the legal field that can be applied is the concept of cyber notary or digital notary. The profession of Notary is closely related to the business world, at least this is shown from the mechanism for determining the need (formation) of Notaries in an area based on (a) business activities, (b) population, (c) the average number of deeds made each month. The influence of the business world on the availability of the number of Notary formations proves that there is a close relationship between the position of Notary and the business world. This data analysis method includes a qualitative approach by conducting a study of laws and regulations to explain the legal problems of written law in the implementation of cyber notary. The data collection technique used is library research, which involves collecting data from various academic sources and official documents. This library study will provide a strong theoretical and contextual basis for understanding the development of cyber notary and the challenges of digitalization faced by the notary profession. The results of the study obtained are that cyber notary has great potential to improve the ease of doing business in Indonesia by accelerating the notarization process, reducing costs, and increasing accessibility. However, to achieve this potential, clear regulations and a broad understanding of the legal validity of digital documents are needed. With the right support, cyber notary can be an effective tool to encourage economic growth and ease of doing business in Indonesia in the era of economic and business globalization.*

**Keywords:** *Digitalization; Digital Notary; Economic and Business Globalization.*

### 1. Introduction

The notary profession in Indonesia currently plays an important role in making deeds. In the legislation Number 30 of 2004 concerning the Position of Notary which was later replaced by Law Number 2 of 2014 also regulates the authority and responsibilities of notaries. Article 65 stipulates that the responsibility of a notary is for every deed that has been made,

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regardless of whether the notary protocol has been given or transferred to the parties responsible for storing it.

Deeds in Indonesia itself have a history that has existed since the Dutch colonial era. A notarial deed is a deed made by a notary and used to record various legal actions, determinations, and agreements that are required by law and/or desired by several parties who have an interest to then be stated in the original deed. In this case, a deed becomes one of the documents that is very much needed in society and a notary acts as a public official appointed by the government to assist the community who are given attributive authority by Law Number 30 of 2004 concerning the position of a notary which was later amended to Law Number 02 of 2014 concerning the Position of a Notary.

At this time, many things have changed due to information and communication technology that has changed various aspects, one of which is in making deeds. Especially in the current era which is entering the era of society 5.0. so that it gives rise to digitalization in making deeds. The era of society itself is an era where modern technology is used to meet human needs in order to increase comfort. Reflecting on the spread of covid-19 in the past, it shows how important technology is to all human activities. This has been able to affect the notary profession in making deeds. In this case, there are many potential changes that can be studied, one of which is how the changes made by digitalization have an impact on notaries in making deeds. This impact, either becomes something that makes it easier for notaries to make deeds or will become a new challenge.

At this time, the concept of a digital notary or cyber notary has emerged, which is related to the implementation of notary authority based on information technology. In general, there is also a perception of the role and function of a notary that has been built in a very conservative model.<sup>1</sup>This model considers a public notary to be worthy of being recognized as a party that produces deeds that have guaranteed authenticity standards, which means that the result is an authentic deed. With the entry of this technology into everyday public life, notaries also use technology in making deeds, but the final form (signed and sealed by a number) guarantees its authenticity.<sup>2</sup>

The position of notary is also closely related to public service in terms of business or economics and business because in addition to requiring legal certainty, speed and flexibility are also needed. Speed in the business world is often not in line with the development of rigid legal norms which emphasize more on the aspect of legal certainty. The paradigm in the Notary Law (hereinafter abbreviated as UUJN) emphasizes more on the concept of legal certainty which means norms in making authentic deeds that are made in such a way as to guarantee perfect proof. For example, in reading the deed, the parties must be present before the Notary and sign it in front of the Notary.

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<sup>1</sup>Luthvi Febryka Nola, "Opportunities for Implementing Cyber Notary in Legislation in Indonesia | Nola | State of Law: Building Law for Justice and Welfare," July 21, 2016, p. 76, <https://doi.org/10.22212/jnh.v2i1.187>

<sup>2</sup>Edmon Makarim, *Notaries and Electronic Transactions, Legal Study on Cybernotary or Electronic Notary* (Depok: PT RajaGrafindo Persada, 2012), p. 131.

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The publication of easy of doing business (hereinafter abbreviated as EODB) or ease of doing business from the world bank is an indication that the business world wants countries to issue a number of policies that support the world in terms of ease of doing business. A country with a good ease index in the business world will be seen as an investment-friendly country, so that later foreign investors will be interested in investing their capital in Indonesia.

Along with the growth of the economy and business, the need for authentic deeds in society is increasing. Referring to the aspect of legal acts, all legal acts should be stated in an authentic deed. The growth of information and technology is in line with the legal field which tends to always develop dynamically. So it is appropriate to participate in developing following the progress of society, not to make it an obstacle in the progress of society. The rapid development of the economy and business in the world community order, leads a society that leads to the development of information technology.<sup>3</sup>

Referring to the relationship between the making of Notarial deeds and the implementation of cyber notary, it can be said that with the concept of cyber notary, Notaries can work efficiently, both in terms of time and in the application of the principle of binding force on the deeds they make. The application of the cyber notary concept is not impossible, considering the rapid development of technology that has become a method for the digital world in the current era of economic and business globalization. The shift in the role of Notaries related to their duties and authorities as State public officials towards the cyber notary era is not easy, because the government and legal designers in Indonesia also play a role in providing a legal umbrella for the implementation of cyber notary, so that cyber notary practices can be carried out properly. The application of information technology in the inauguration of notarial deeds based on cyber notary is "a concept where notaries can work with existing technology-based developments, namely cyber notary which is a notary public by providing a service with notarial services, and documents electronically".<sup>4</sup>

Based on the background that has been described, the author intends to conduct research to be used as a thesis with the title "DIGITALIZATION OF THE NOTARY PROFESSION IN THE ERA OF ECONOMIC AND BUSINESS GLOBALIZATION".

## **2. Research Methods**

This research focuses on an in-depth analysis of the legal and regulatory framework related to the digitalization of the notary profession, taking into account various theoretical and practical aspects involved in the digital transformation of notary services.

The first stage of the approach method is a systematic literature study. Researchers will collect and analyze various legal sources, including laws and regulations, scientific journals, academic articles, and official publications related to cyber notary and the digitalization of

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<sup>3</sup>Budhijanto, D. (2019). Telecommunications, Broadcasting and Information Technology Law: Regulation and Convergence. Bandung: Refika Aditama. p. 1.

<sup>4</sup>Darmaangga, IDGCD, & Mayasari, IDAD (2021). Legality of Cyber Notary-Based Notarial Deed Inauguration Through Zoom Conference Media. Acta Comitatus: Journal of Notary Law, 6(01). p. 1. DOI: <http://doi.org/10.24843/AC.2021.v06.i01.p.16>.

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notary services. This approach allows researchers to build a strong theoretical foundation and understand the overall legal context.

The method of data collection in this study is by conducting documentation research. Documentation will include the collection of official documents, laws and regulations, and related academic literature.

### **3. Results and Discussion**

#### **3.1. The Concept of Digitalization in Notary Practice in the Era of Economic and Business Globalization**

##### **3.1.1. Cyber Technology in Notary**

Notary is one of the professions that originated in the 2nd-3rd century in the Roman era, at that time it was still called *scribae*, *tabellius* or *notarius*. At that time, Notary was defined as a person who served as a speech recorder. The word Notary comes from the name of a speech recorder *NOTARIUS*, which is also used by for the term fast writer or stenographer.

Notary is one of the oldest branches of the legal profession in the world. The position of Notary was born because society needed it, not a position that was deliberately created and then socialized to the public.

The establishment of the Notary Institution was due to the needs of society both in ancient times and today. Linguistically, Notary comes from the word *Notarius* for singular and *Notarii* for plural. *Notarius* is a term used by the Roman people to name those who do writing work, but the function of Notary at that time was different from the function of Notary today. Notary gradually had a different meaning from the original so that around the 2nd century AD those who were called by that name were those who made records in shorthand.

Notaries as public officials are appointed by the state and work for the state, although Notaries are not civil servants who receive salaries from the state. The duties of a Notary are to carry out public services in the field of deed making services and other duties assigned to him/her that are inherent in the predicate as a Public Official within the scope of the Notary service field. The position of Notary requires responsibility, both individually and socially, especially obedience to positive legal norms and a willingness to submit to the code of professional ethics. In carrying out his/her position, a Notary must adhere to his/her function as a mediator who may not take sides, not an intermediary or a defender.

Notary is a public official who is authorized to make authentic deeds and has other authorities. As a public official, Notary has an important position and role in realizing a dignified and sovereign nation life that is imbued with legal certainty. Along with the development of increasingly modern life, which is characterized by increasing contractual relations between fellow citizens or social institutions and government institutions, the importance of Notary services will be felt. Especially in terms of making Notary deeds that are able to provide legal certainty for the parties involved in the contract. In other words, as a country of law (*rechtstaat*), Indonesia is very interested in the existence of Notaries who

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carry out their profession in legal services to the community, need protection and guarantees in order to achieve legal certainty<sup>5</sup>.

The rapid development of information technology today has brought various very significant impacts on human life. Various conveniences offered by the development of telecommunications have enabled relationships between humans to take place quickly and easily without taking into account aspects of space and time. On the other hand, notaries as public officials who are tasked with serving the community are expected not to be left behind in responding to these developments.

In addition, the development of information technology also greatly affects people's lives, thus encouraging the government to issue Law Number 11 of 2008 concerning Information and Electronic Transactions, State Gazette Number 58, Supplement to State Gazette Number 4843 (hereinafter referred to as the ITE Law). The enactment of the ITE Law is expected to guarantee technological progress to improve effectiveness and efficiency in public services.

The entry of technological influence in the form of electronicization into notarial activities has disrupted the balance that has existed so far. Modern notaries will make changes and use the help of technology, while those who are not familiar with this technology will choose to stick to the procedures that have been carried out so far.

*Cyber notary* itself is a concept that utilizes technological advances for notaries to create authentic deeds in cyberspace and carry out their duties every day.<sup>6</sup> For example: electronic signing of deeds and General Meeting of Shareholders by teleconference. This aims to facilitate parties who live far apart, so that with the existence of cyber notary, distance is no longer a problem.

Actually, cyber notary has emerged since 1995, but it was hampered by the absence of a related legal basis. However, since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions, the discourse of cyber notary has been rolling again.

*Cyber notary* intended to facilitate or speed up the implementation of the Notary's duties and authority in making authentic deeds regarding all acts or agreements or provisions required by law or what interested parties wish to be stated in the authentic deed<sup>7</sup>.

Along with the development of society which is also accompanied by the increasingly rapid development of electronic transactions, notaries in carrying out their duties and functions as public officials certainly cannot be separated from technological advances as developments in society. In carrying out these duties, it has been stated in Article 15 paragraph (3) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Regulation of the Position of Notaries, State Gazette of the Republic of

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<sup>5</sup>Sri Utami, Hari Purwadi, and Adi Sulistiyono. "Legal Protection for Notaries in Criminal Justice Process According to Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning the Position of Notaries." PhD diss., Sebelas Maret University, 2015.

<sup>6</sup>Luthvi Febryka Nola. "Opportunities for the Implementation of Cyber Notary in Legislation in Indonesia." *State of Law: Building Law for Justice and Welfare* 2, no. 1 (2016): 75-101.

<sup>7</sup>Friko Rumadanu, Esther Masri, and Oti Handayani. "The Use of Cyber Notary in Authentic Deeds and Its Evidential Power in the Perspective of the Notary Law." *KRTHA BHAYANGKARA* 16, no. 1 (2022): 89-100.



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Indonesia of 2014 Number 3, Supplement to the State Gazette Number 5491 (hereinafter referred to as Law Number 2 of 2014) which reads:

"In addition to the authority as referred to in paragraph (1) and paragraph (2), a Notary has other authority as regulated in statutory regulations."

Other authorities referred to in this Article have been outlined in the explanation of Article 15 paragraph (3) of Law Number 02 of 2014 which states that:

"What is meant by other authorities regulated in laws and regulations include: The authority to certify transactions carried out electronically (cyber notary), make deeds of waqf pledges and aircraft mortgages,"

Based on the explanation of the article, there is a notary's authority to certify transactions carried out by cyber notary. The term certification comes from the English word 'certification' which means information, validation. The definition of certification itself is a procedure in which a third party provides a written guarantee that a product, process or service has met certain standards, based on an audit carried out with agreed procedures.<sup>8</sup> Regarding the implementation of cyber notary, initially the provisions regarding electronic notary services were expected to be included in one of the articles in Law Number 02 of 2014.

*Cyber notary* can contain the meaning that a notarial deed made by electronic means or a notary only validates an agreement whose reading and signing of the deed is not carried out before a notary<sup>9</sup>. The electronic transaction is an agreement whose reading and signing of the deed is not carried out before a notary. This will result in whether the notarial deed has fulfilled the requirements as an authentic deed if associated with Article 16 paragraph (1) letter m of Law Number 02 of 2014 and Article 1868 of the Civil Code.

### **3.1.2. The Influence of Cyber Notary on Ease of Doing Business in Indonesia**

Digital notary or cyber notary is a modern concept in notary services that utilizes information and communication technology to provide electronic deed and document creation services. This concept was born in response to the rapid development of digital technology and the public's need for faster, more efficient, and accessible services from anywhere.

In relation to the Notary Position, we cannot be separated from the Notary's function in making authentic deeds and its relation to cyber notary, namely regarding electronic signing. The concept of cyber notary cannot be separated from the 5.0 era or often referred to as optical internet, therefore, does this era not have a significant influence on conventional Notaries, where the parties must come to the Notary's office to sign the deed. Therefore, the implementation of this cyber notary is considered very important due to the increasingly advanced and sophisticated technological developments in supporting the ease of doing business in Indonesia.

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<sup>8</sup>Kadek Setiadewi, and I. Made Hendra Wijaya. "Legality of Cyber Notary-Based Notarial Deeds as Authentic Deeds." *Journal of Legal Communication (JKH)* 6, no. 1 (2020): 126-134.

<sup>9</sup>Dwi Merlyani, Annalisa Yahanan, and Agus Trisaka. "The Obligation of Reading Authentic Deeds by Notaries in Front of Applicants with the Cyber Notary Concept." *Repertorium: Scientific Journal of Notary Law* 9, no. 1 (2020): 36-47.

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In the last five years, the ease of doing business ranking in Indonesia has not moved much. The problems that hinder it are in terms of starting a business, licensing (dealing with construction permits), registering assets (registering property), and making contracts (enforcing contracts). These things are measured in terms of seeing whether a country creates a healthy, competitive and simple business environment. The main problem that must be fixed is the procedures and time that must be simplified. Of these indicators, the first is directly related to the function of a Notary as an indicator in starting a business (starting a business). Notaries must be able to respond to developments in terms of technological advances like today, and adapt to the demands of the times that require time efficiency in the process of making deeds. One way to make a deed faster is to apply the concept of a cyber notary in the UUJN.

Economic growth is a key factor in encouraging legal certainty and business certainty in the current era of globalization. Therefore, to create a conducive business climate, the speed and accuracy of administrative services are very important in order to achieve requirements such as improving the quality of public services. In Indonesia, in the development of contemporary administrative law, it has adopted the principle of positive fiction, namely a request addressed to it (administrative inaction) if the government administrative authority as it should be, namely silent or ignoring, or not serving optimally (unprofessional), processing a request for a long time (delaying services), not responsive (unresponsive), and so on which are identical to things that are included in the category of maladministration, then the attitude of such administrations is viewed as legal fiction as an agreement to the request submitted to it, meaning that "the application of the principle of positive fiction will provide a clear time frame and certainty of the process of managing various procedures in order to fulfill the licensing aspects in the legal field."<sup>10</sup>

The legal prospects for the provision of digital notary services (cyber notary) in the notary law system in Indonesia are reviewed from: "(1) Modern legal aspects, that by adapting the existing modern legal system, the concept of cyber notary can be applied in Indonesia. The increasing number of users of electronic documents and electronic signatures in cross-world trade transactions, both in the real world and the virtual world, provides a very large opportunity for notaries to develop the acceleration and growth of development through cross-trade transactions, and (2) Technically, Indonesia is ready to implement the concept of cyber notary because it is supported by the facilities and infrastructure provided by PT Telkom Indonesia by using the Certification Authority (CA) facility."<sup>11</sup>

There are four reasons why Notaries are required to support the improvement of ease of doing business (EODB) in Indonesia.<sup>12</sup>:

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<sup>10</sup>Simanjuntak, Enrico. Prospects of Positive Fiction Principles in Supporting Ease of Doing Business in Indonesia. *Jurnal Rechts Vinding: Media for National Legal Development*. 7. 2. (2018): 301-320.

<sup>11</sup>Emma Nurita. *op.cit.* p. 119.

<sup>12</sup>Alwajdi, Muhammad Farid. "The Urgency of Cyber Notary Regulation in Supporting Ease of Doing Business in Indonesia." *Jurnal Rechts Vinding: Media for National Legal Development*. 9. 2 (2020): 257.

### **3.2. Challenges and Obstacles Faced by the Notary Profession in the Digitalization Process**

#### **3.2.1. Challenges Faced**

##### **a. The Challenge of Digitalization**

Digitalization is the process of transforming various aspects of life from conventional systems to digital systems based on information and communication technology. In the modern context, digitalization is not just a media shift, but a fundamental change in the way we work, interact, and view the world. This phenomenon has penetrated almost all sectors, from education, business, government, to social life.

One of the main challenges of digitalization is the digital divide that still occurs in various regions. Not all communities have the same access to technology and information infrastructure. Differences in economic, geographical, and educational capabilities cause some groups of communities to lag behind in adopting digital technology. This poses a risk of marginalization for those who cannot keep up with technological developments.

The aspect of information security is another significant challenge in digitalization. The more personal and institutional data that is stored digitally, the greater the risk of cybersecurity breaches. Cyber attacks, data theft, and information manipulation are real threats that require continuous monitoring and protection. Organizations and individuals are required to always improve their digital defense capabilities.

Employment transformation is a complex challenge faced in the digital era. Automation and artificial intelligence (AI) are starting to replace human roles in various fields of work. This has resulted in a shift in competencies and the need for new skills. Workers are required to continuously learn and develop their digital skills to stay relevant in an increasingly competitive job market.

Digital ethics and regulation have become increasingly crucial issues in this modern era, where technological developments are taking place at a rapid pace. Innovations in the digital field, such as artificial intelligence, big data, and the internet of things (IoT), have transformed the way we interact, work, and live. However, these advances often outstrip the ability of policymakers to formulate comprehensive regulations. This creates a gap between rapidly evolving technologies and existing legal frameworks, posing new challenges for society.

One of the major issues that has emerged is data privacy. As more and more personal information is collected by tech companies, individuals often do not have full control over their own data. Regulations such as the General Data Protection Regulation (GDPR) in the European Union are a first step towards protecting individual privacy, but many other countries still do not have similar laws. Therefore, it is important for governments around the world to adopt a stricter approach to personal data protection in order to maintain public trust in technology.

In addition to data privacy, intellectual property rights are also a major concern in the context of digital ethics. In a world where content can be easily copied and distributed online, protecting creative works is becoming increasingly difficult. Policymakers must formulate laws that not only protect the rights of creators but also encourage innovation and collaboration. Without a clear and fair legal framework, there is a great risk that creators will lose their rights to their works.



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The social responsibility of technology companies cannot be ignored either. Many large companies have a significant impact on people's daily lives through their products and services. Therefore, they must be responsible for the social impact of the technology they develop. This includes ensuring that their products are not only safe to use but also beneficial to society as a whole. In this regard, governments need to work with the private sector to set high ethical standards.

#### **b. Development of Technology Infrastructure to Support Digitalization of Notaries / Cyber Notary**

In the era of the Industrial Revolution 4.0, digital infrastructure is a basic means for access to information and communication to be carried out quickly and efficiently. This digital infrastructure includes internet networks, data centers, telecommunications, and various other information technology devices and services.<sup>13</sup> Based on this, sustainable infrastructure development is very important to be improved to meet the needs of today's society and encourage the ability of future generations to meet digital needs.

The digital infrastructure development strategy is carried out through three main layers, namely developing the backbone network, middle mile, and last mile. At the backbone layer, the Palapa Ring program is aimed at increasing the utility of the network that has been built in creating an integrated telecommunications infrastructure, covering the western, central, and eastern regions of Indonesia. At the middle mile layer, the National Strategic Project (PSN) in the form of a multifunctional satellite (SATRIA) is presented to provide broadband internet access solutions in remote areas that have not been reached by terrestrial networks. At the last mile layer, the 4G BTS provision program is carried out through cooperation between the government and cellular operators to expand 4G services, especially in the Disadvantaged, Frontier and Outermost (3T) areas.<sup>14</sup>

The strategy is carried out to accelerate digital transformation and support inclusive digital economic growth, although its implementation is not free from various challenges. One of the challenges encountered is the certainty of the existence of widespread and equitable internet access. This is because basic infrastructure such as electricity and internet network access are often difficult to reach in rural areas. This limited access also causes a digital divide between urban and rural areas, so that many areas are left behind in adopting digital technology.<sup>15</sup>

The next challenge is the need for strong regulation and governance. Strong regulation is intended to ensure that the digital infrastructure that is developing in Indonesia meets cybersecurity standards and can be accessed by all people without disruption. The development of digital infrastructure requires innovative solutions.

This digital infrastructure development strategy continues to be carried out to improve accessibility, connectivity, and digital literacy for the wider community, including remote

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<sup>13</sup>Supa, FB (2023). Indonesia's digital infrastructure: Improving economic growth and social welfare. Jakarta State University.

<sup>14</sup>Ministry of Finance of the Republic of Indonesia. (2024). Financial Note and Draft State Budget (RAPBN) for Fiscal Year 2025. Ministry of Finance of the Republic of Indonesia.

<sup>15</sup>Zahra, A., Agustini, TD, Andari, ASM, & Rachman, IF (2024). Digital transformation in rural communities: Challenges and opportunities towards the realization of SDGs 2030). Multidisciplinary Journal of Academic Sciences, Vol. 1 No. 3.

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areas. However, this digital infrastructure support also needs to be supported by the development of competent human resources, an inclusive and sustainable digital ecosystem can be created.

The strategy of building digital infrastructure is a continuous effort to ensure that digital transformation runs well and brings maximum benefits to the community. The problem is, until now the development of digital infrastructure in Indonesia is still uneven and still needs to be supported by regulations that provide legal protection for digital infrastructure governance. Therefore, according to the National Cyber and Crypto Agency (BSSN), the Draft Cyber Security Law (RUU Keamanan Cyber) is a regulation that can provide a legal basis for strengthening the quality and governance of national digital infrastructure<sup>16</sup>.

### **c. Security and Trust in the Implementation of Digital Notary / Cyber Notary**

Security is one of the main challenges in implementing cyber notary. The use of digital technology in making deeds requires a strong security system to protect data and information sent electronically. Encryption technology, layered authentication, and digital certification systems must be implemented to ensure that digital signatures and electronic documents cannot be manipulated or misused.

Public trust in cyber notary also needs to be built, because this process involves important and sensitive documents, the public must be sure that the technology used is safe and reliable. This requires clear regulations and the implementation of high security standards in every electronic transaction carried out through cyber notary.

The concept of cyber notary is an innovation in the notary system that utilizes advances in information technology to carry out notary duties and authorities digitally. The Directorate General of Telematics Applications of the Ministry of Communication and Information revived and re-discussed this concept as part of an effort to face the challenges of increasingly growing document digitization. The traditional role of a notary. A notary is tasked with authenticating, legalizing, and storing legal documents such as deeds, wills, agreements, and other documents. However, with the emergence of information technology, especially in the form of document digitization, notaries are faced with new challenges related to how to authenticate and legalize documents that are different from conventional methods.

The concept of cyber notary is here to answer these challenges by utilizing information technology. With cyber notary, documents can be authenticated, legalized, and stored digitally, reducing dependence on physical documents.<sup>17</sup> This means that the process of document authentication and legalization can be done online, by utilizing digital certificates related to the role of the notary as a trusted third party. In organizing electronic information and transactions, the Draft Government Regulation (RPP) on the Implementation of Electronic Information and Transactions is the basis for discussing the concept of cyber

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<sup>16</sup>Ihsan, N. (2024, June 26). BSSN confirms that the cybersecurity bill is urgent for the sake of Indonesia's digital security. *antaranews.com*. <https://www.antaranews.com/berita/4168611/bssn-tegaskan-ruu-keamanan-sibermendesak-demi-keamanan-digital-ri>

<sup>17</sup>I Putu Suwantara, et al., "The Concept of Cyber Notary in Ensuring the Authenticity of Electronic Transactions", *Acta Comitas: Journal of Notary Law* 6, No. 1, (2021): 173-184.

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notary.<sup>18</sup>This RPP will regulate the use of digital certificates and the role of notaries as trusted third parties in the authentication and legalization process of electronic documents.

The implementation of cyber notary technology brings several significant benefits in improving the security of electronic transactions. Here is an in-depth explanation of these benefits:

#### 1. Identity Verification

One of the main benefits of *cyber notary* is its ability to verify the identity of parties involved in electronic transactions. This helps ensure that the parties making the transaction are truly legitimate parties and not fake identities. By using technologies such as biometrics, digital certificates, or two-factor verification processes, *cyber notary* can confirm identity with a high degree of certainty.

#### 2. Data Integrity

*Cyber notary* also helps ensure the integrity of electronic transaction data. By implementing encryption and digital signature technology, transaction data can be guaranteed to be intact and will not experience unauthorized changes during the transaction process. This is important to prevent data manipulation or transaction forgery that can harm one party.

#### 3. Legal Evidence

*Cyber notary* provide valid proof of authentication related to electronic transactions. This proof has strong legal value and can be used as evidence in cases of disputes or disputes that may arise. Thus, the existence of *cyber notary* help strengthen the validity and reliability of electronic transactions in the eyes of the law.

The benefits offered by cyber notary technology not only help improve the security of electronic transactions, but also strengthen the trust and reliability of the system as a whole. This is an important step in facing the challenges and risks associated with the development of information technology in the business and financial world.

In the era of digital transformation, the role of notaries is changing and evolving to accommodate an increasingly technology-oriented business and legal environment. Notaries need to continue to receive training and education to understand changes in technology, regulations, and best practices related to digital transactions. Technology is constantly evolving, and notaries need to understand the latest developments in technology that are relevant to their role.<sup>19</sup>This includes an understanding of digital signatures, encryption, cybersecurity, and other technologies used in digital transactions.

### 3.2.2. Obstacles Faced

#### a. Regulations That Do Not Yet Fully Support

Globalization is an era that must be lived as a consequence of life that needs each other. This era cannot be avoided so as not to be isolated from world progress. Therefore, the Indonesian nation, like it or not, must prepare itself for globalization. Ultimately, globalization has an impact on various fields or segments of human life, therefore

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<sup>18</sup>Syamsul Bahri, et al. Op.Cit.

<sup>19</sup>EAA Siska, "The Role of Notaries in Preventing Money Laundering Crimes in the Digital Era Through the Go Anti Money Laundering (GoAML) Application", Tora Law Journal 8, No. 3, (2022): 275-292.

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opportunities and challenges will be opened. One of these opportunities is in the field of service trade.

To enter this era, of course, the software must be prepared. In this regard, human resources (HR) must be prepared, so that opportunities in the era of globalization can be achieved. Thus, these opportunities are not only utilized by foreigners, although this is something that is natural in the World Trade Organization (WTO) with an open market.

When the Uruguay Round Agreement was completed on December 15, 1994, which was signed in its entirety in Marrakech (Morocco) on April 15, 1995. Then continued with the formation of the WTO in the form of the Agreement Establishing the Multilateral Trade Organization, so that countries participating in it inevitably had to comply with the Uruguay Agreement. Thus, every citizen and legal entity of the country involved in it (including Indonesia), especially in the business world (business) is obliged to comply with the substance of the Uruguay Round.

There are 4 (four) areas of law that are directly impacted by the Uruguay Agreement, namely investment, trade in services, trade in intellectual property rights, and competition law. These areas must be further implemented in national legislation by taking into account the principles of free trade, such as transparency, fair access to all markets for all economic actors and no tariff barriers.

There are countries that disagree with the substance of the Uruguay Round Agreement. The disagreement is because it gives too many advantages to developed countries, for example having to open up the market for products from other WTO member countries. This will be a big problem when the country in question does not have a competitive product. Countries that do not have a product will become a "market" for other countries. To overcome this, it was decided that free trade in the WTO would be carried out in stages in certain areas. In 2020, free trade in the WTO must be fully implemented.

Rubens Ricupero as Secretary General at the 1996 United Nations Conference on Trade and Development (UNCTAD) defined globalization as: "A process of producers and investors increasingly behaves as if the world economy consists of a single market and production area with regional or national subsector, rather than a set of national economies linked by trade and the investment flow".<sup>20</sup>Based on the definition of globalization, globalization as a process includes 3 (three) areas, namely:<sup>21</sup>

- 1) *Globalization of trade;*
- 2) *Globalization of production;*
- 3) *Globalization of financial markets.*

Regarding these 3 (three) areas, the market must be open, meaning there must be liberalization,<sup>22</sup>or the removal of barriers (such as tariffs or national control) in order to create a free markets in goods, services or finance. Liberalization does not mean free and open in all fields or eliminating the country's borders (borderless) or its sovereignty. Such

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<sup>20</sup>Panos Briefing, Globalization and Employment, New Opportunities, Real Threats, London

Number 33, May 1999, p. 3.

<sup>21</sup>Ibid, p. 1.

<sup>22</sup>Ibid.

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concerns are not without reason, because strong industrial countries and dominate the world economy, such as the United States, Japan can force their will on other countries to open their markets. If the country concerned follows the will of the United States and Japan and other developed countries, then it is certain to be powerless.

In order for liberalization not to have a negative impact, privatization, deregulation and debureaucratization tools are needed by the state (government) as a player in trade globalization. The breadth of liberalization does not only cover goods, but also services, so various good preparations are needed.

The definition of services is defined in Article 1 Paragraph 3 (b) GATS, namely that services include any sector except service applied in the exercise of governmental authority.<sup>23</sup>If examined further, there are no details regarding the service sector that is a free commodity of the WTO, there are only exceptions, namely services that are the authority of the government (governmental authority).

#### **b. Overlapping regulations between the Notary Law (UUJN) and the Electronic Information and Transactions Law (UU ITE)**

The ITE Law regulates digital signatures and electronic transactions, but there is an exception in Article 5 paragraph (4) of the ITE Law which states that electronic documents do not apply to authentic deeds that must be made in writing. This is contrary to the principle of cyber notary which should allow the creation of deeds electronically.

This contradiction shows the inconsistency between UUJN and UU ITE, which results in legal uncertainty in the implementation of cyber notary. Therefore, regulatory updates are needed, especially in UUJN, to be in line with technological developments and to be able to support cyber notary more optimally.

Technological developments require adjustments in legal regulations. The current Notary Law needs to be updated to suit the needs of the times, especially in regulating the implementation of cyber notary. This update is important to provide legal certainty for all parties involved, as well as to enable notaries to carry out their duties efficiently with the support of technology.

The new regulation must be able to accommodate the use of technology such as digital signatures and video conferencing in the creation of authentic deeds, without reducing the legal force of the deed. In addition, the rules regarding electronic documents need to be aligned with the ITE Law so that there is no overlapping regulation.

*Cyber notary* is an innovative solution to support ease of doing business in the digital era. With more supportive regulations and synchronization between UUJN and UU ITE, cyber notary can be applied more widely in Indonesia. This will not only accelerate the business process, but also provide better legal certainty for business actors. Therefore, regulatory updates in the notary sector are very important to be implemented immediately.

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<sup>23</sup>GATS is a part of GATT that regulates trade in services. Then WTO as the administrator of GATT has also formed a special council in the WTO structure specifically to handle service issues, namely the council for trade in services.



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As two laws that have an important role in regulating cyber notary, the inconsistency between the two causes uncertainty in the implementation of technology-based notary. According to Edmon Makarim, the making of deeds does not have to be perceived solely with paper media so that the making of deeds electronically can be done by paying attention to applicable laws. Based on the health quarantine law, the requirement for physical presence is not absolute in emergency conditions for now. Edmon Makarim explained "The use of certified electronic signatures produces evidence that cannot be denied so that it meets the rules of authenticity and protects notaries from technical liability.

A private deed that is not denied by the parties functions as an Authentic Deed". He explained "Notaries are part of government administration, where based on the law on government administration and the law on public services and the law on archives, electronic information has been accepted as evidence and allows for electronic decision-making based on the information". He also said that the exception article in the ITE law is not a prohibition so that it does not automatically eliminate the authority of notaries to carry out their activities in electronic form which is contained in article 5 of the ITE Law which excludes notarial deeds in the context of electronic documents as valid evidence so that it has the potential to cause problems for notaries.

### **3.3. Implementation of Digitalization of Notary Profession in Future Positive Law**

#### **3.3.1. The Influence of Information Technology Advances on the Position of Notaries in the Future**

There are two factors that will determine the influence of advances in information technology on the position of notaries in the future, namely: (1) legal politics, and (2) legal awareness.<sup>24</sup>.

The first factor is legal politics, in this regard the applicable laws and regulations should not be ignored, but should be viewed as a tool whose function must be optimized, where it is intended to create order and legal certainty for the community. Political decisions and laws and regulations that are part of legal politics must overshadow the course of legislation. The state works with the help of its institutional organs, and its duties or functions include drafting laws that must be realized. That way, the government which has the status of a state institution can provide emphasis and direction on which legal system or policy or what kind of law should be adopted and developed. Indonesia has the status of a country of law. Therefore, politics must follow the law, not the other way around. The development of the right legal paradigm is also important for successfully reforming or reconstructing the legal structure<sup>25</sup>.

The second factor is legal awareness, in an effort to maintain his life, every human being must be able to fulfill basic needs related to his physical, spiritual, and emotional needs. In addition, humans also need to fulfill their psychological needs, for example the need for knowledge, to obtain a sense of security, justice, and legal certainty. It should be noted that

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<sup>24</sup>Muhammad Akbar, and Fadhil Yazid. "Legal Certainty in Ease of Doing Business in the Era of Industrial Revolution 4.0 Related to the Notary Profession." *Law Journal* 1, no. 2 (2021): 116-124.

<sup>25</sup>David Tan, and Lu Sudirman. "Final Income Tax: A Classic Contemporary Concept to Increase Voluntary Tax Compliance among Legal Professions in Indonesia." *JILS* 5 (2020): 125.

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notaries in Indonesia have long been educated and trained strictly with the principle of *tablelionis officium fideliter exerceboliter*. This principle is ingrained in the body of notaries, so it is difficult to be dynamic, especially in the midst of changes brought about by very disruptive electronic technology and information.<sup>26</sup>

In all legal systems that require an authentic form for certain legal acts, it appears that the value and evidentiary power contained in the deed are perfect. The main mission that must be carried out in all legal systems that require an authentic form for certain legal acts, it appears that the value and evidentiary power contained in the deed are perfect. The main mission that must be carried out by a notary is to produce evidence whose purpose is to show that it is valid and has economic value. Reality shows that in determining the truth of information, including identity, competence or authority in carrying out legal acts planned by a number of parties, can only be obtained and determined by a Notary<sup>27</sup>. In addition, the notary world has so far utilized technological advances, including the use of online registration systems such as the Legal Entity Administration System (SABH), and Online Single Submission (OSS). Information and communication technology has provided significant assistance in terms of the speed and quality of notary services. Information systems have taken over much of the protocol-based work, which has a positive impact on the results of notary work, namely becoming more cost-effective.<sup>28</sup>

### **3.3.2. The Future of Cyber Notary Implementation in Indonesia**

The history of the development of Cyber Notary first appeared in 1989, in the Trade Electronics Data Interchange System Legal Workshop organized by the European Union, the phrase "electronic notary" was first initiated by a delegation from France, which has the following meaning:

"Various industry associations and related peak bodies may act as an "electronic notary" to provide an independent record of electronic transactions between parties, ie, when company A electronically transmits trade documents to company B, and vice versa."<sup>29</sup>

The definition of the phrase "Cyber Notary" was later put forward in the United States by the Information Security Committee of the American Bar Association in 1994, which reads:

"The committee envisaged that this proposed new legal professional would be similar to that of a notary public but in the case of the Cyber Notary his/her function would involve electronic documents as opposed to physical documents."<sup>30</sup>

The definition of electronic notary and cyber notary basically has the same that the media used in the act is electronic media (intangible) as a substitute for paper documents (tangible) in general. The idea of cyber notary by the Information Security Committee of the American Bar Association provides a more specific definition scope, namely cyber notary is a

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<sup>26</sup>David Tan. "Juridical Analysis on the Tax Compliance of Notary in Relation to Its Honorarium in the Perspective of the People's Welfare (Research Study at the Indonesian Notary Association of Batam City)." *IJASSH* (2020): 36-43.

<sup>27</sup>Rahayu Hartini. *Commercial Law* (UMM Press, 2018).

<sup>28</sup>Lendo Theo Engelbert, Hanif Nur Widhianti, and Diah Aju Wisnuwardhani. "Legal Analysis of Electronic Storage of Notary Deed Minutes." *Scientific Journal of Pancasila and Citizenship Education* 6, no. 1 (2021): 172-178.

<sup>29</sup>Smith, "The Role of the Notary in Secure Electronic Commerce." *Loc. Cit.*

<sup>30</sup>*Ibid.*

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new legal profession similar to a public notary, but in cyber notary has a function that involves electronic documents.

The concept of cyber notary according to RA Emma Nurita, namely: "The concept of cyber notary can temporarily be interpreted as a notary who carries out the duties and authorities of his position based on information technology related to the duties and functions of a notary, especially in making deeds."<sup>31</sup> Edmon Makarim is of the opinion that the concept of cyber notary in Indonesia is still under debate, although technology allows the duties, functions and authority of a Notary to be carried out online and remotely, but legally this seems impossible.<sup>32</sup>

#### 4. Conclusion

From the results of the research and discussion, the author draws the following conclusions:

1) The rapid development of technology today has brought significant changes in various sectors, including the world of law, economics and business. One innovation in the legal field that can be applied is the concept of cyber notary or digital notary. This innovation aims to simplify the process of making deeds and other legal documents by using technology such as digital signatures and video conferencing. In Indonesia, the implementation of cyber notary still faces a number of obstacles, especially in terms of regulations that do not fully support this technology. 2) Cyber notary can be a solution in improving the ease of doing business in Indonesia, therefore it is necessary to update the related regulations, especially the Notary Law (UUJN) and the Electronic Information and Transactions Law (UU ITE). Cyber notary is a concept where notaries can carry out their duties using information technology such as computers, internet networks, and other electronic media. With cyber notary, the process of making authentic deeds no longer has to be done physically at the notary's office, but can be done online using video conference technology and digital signatures. However, even though the technology already exists, the implementation of cyber notary in Indonesia is still constrained by regulations that have not been properly integrated. This causes the implementation of cyber notary to not run optimally. Based on Article 15 of UUJN, notaries are given the authority to make deeds electronically, but the inconsistency with the ITE Law causes contradictions in the validity of electronic documents. 3) In the context of ease of doing business, cyber notary offers many benefits. The process of making deeds which usually takes a long time and costs a lot of money can be shortened through the use of technology. Business actors can make deeds online without having to visit a notary's office, making it more effective and efficient, both in terms of time and cost. In addition, cyber notary allows document verification and validation to be carried out faster, thus speeding up business procedures which are very important in a competitive business climate. 4) The implementation of cyber notary in Indonesia is still in its early stages, but the prospects are very promising. With the right regulatory updates and adequate technological infrastructure support, cyber notary can be a long-term solution to improve the efficiency of the legal process in Indonesia. In addition, the implementation of cyber notary can also support digital transformation in the legal sector as a whole, creating a more modern, fast, and

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<sup>31</sup> Nurita, Cyber Notary: Initial Understanding of Thought Concepts.

<sup>32</sup> Edmon Makarim, "Modernization of Future Notary Law: Legal Study of the Possibility of Cyber Notary in Indonesia," *Journal of Law & Development* 41, no. 3 (2011): 468, <https://doi.org/10.21143/jhp.vol41.no3.287>.

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secure legal ecosystem. 5) The success of cyber notary in the future will also depend on the alignment between regulation, technology, and public trust. With the right synergy between the government, private sector, and society, Indonesia can utilize digital technology to create a more effective, efficient and competitive legal system in the current era of economic and business globalization.

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